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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-618

WILLIAM THOMAS PINNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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"All of the statements contained in the exhibits * * * are true, complete and correct," according to Mr. Carlin, Assistant United States Attorney, the Government's trial attorney in this case.[1]

[1]"The next contact between the government and the defendant concerning the matters at bar took place approximately one year later, March 4, 1975, when Revenue Officer Mathis contacted the defendant concerning the delinquent returns. Once again, as with Mrs. Howell, the defendant did not state that his failures to file were involuntary or that he would have filed if the government would allow him to file without making payment, or anything of similar meaning. Instead, after acknowledging that the required returns had not yet been filed and that he was the sole person responsible, he explained that "pressing business affairs, procrastination, and shortage of working capital were the only

(continued)

The Fifth Circuit determined that WILLIAM THOMAS PINNER must be acquitted, if the statements in the Stipulation were true, and asked the Trial Court to make specific findings with respect to PINNER's credibility. *Pinner,* at 1206, 1207. After hearing argument from Mr. Morris, Assistant United States Attorney, almost one year after the Government and the defense had rested, the Trial Court, sitting as the finder of fact, found, in contravention of the Stipulation, that the statements stipulated to as being true were "unworthy of belief". It is significant to note that at this point in time, the Government's attorney was no longer Mr. Carlin.

Conflict exists. Furthermore, where the Government's evidence proves the innocence of the defendant, WILLIAM THOMAS PINNER, the Government failed to meet its burden of proof and the judgment of guilt cannot stand. In the words of the Fifth Circuit:

> "If the appellant [WILLIAM THOMAS PINNER] did not file because he mistakenly believed he could not without simultaneously paying the tax due, he must be acquitted." *Pinner,* at 1207 n.8

(footnote continued from preceding page)

reasons the returns had not been filed *or* paid."[4] (Stip. ¶ 14, Ex. F-1) (emphasis added.)

[4]It is very interesting to note the use of the disjunctive "or" as opposed to the conjunctive "and". As defendant pointed out in his brief, both parties stipulated that

> ". . . all of the facts stated herein *and all of the statements contained in the exhibits attached hereto and incorporated by reference into the Stipulation* are true, complete and correct. . . . (emphasis added) (Stip. first unnumbered paragraph)" Brief of Appellant, p. 12.

It is respectfully submitted that, under the terms and conditions of the Stipulation, this statement's use of the disjunctive, standing alone, could represent sufficient evidence of willfulness." (Brief of Appellee 15, 16, as filed by Mr. Carlin with the Fifth Circuit in July, 1977).

It is, therefore, respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January, 1979